

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

MUKESH KUMAR, *et al.*,

Plaintiffs,

-against-

BOCHASANWASI SHRI AKSHAR
PURUSHOTTAM SWAMINARAYAN
SANSTHA, INC., *et al.*,

Defendants.

Civ. Action No.:

21-CV-11048 (GC) (TJB)

**MEMORANDUM IN RESPONSE TO PLAINTIFFS' COUNSEL'S MOTION TO
WITHDRAW AS COUNSEL FOR 12 PLAINTIFFS**

Defendants Bochasanwasi Shri Akshar Purushottam Swaminarayan Sanstha, Inc., BAPS Mercer LLC, BAPS Robbinsville LLC, BAPS Fellowship Services, Inc., Bharat Patel a/k/a Bharat Doe a/k/a Bharat Bhai, Pankaj Patel, Kanu Patel, Swami Prasanand a/k/a Prashant Darshan Das Sadhu, BAPS Atlanta, LLC, BAPS Chino Hills, LLC, BAPS Development, Inc., BAPS Houston, LLC, BAPS Chicago, LLC, and Rakesh Patel¹ in the above-captioned civil action submit this Response to Plaintiffs' Counsel's motion to withdraw (the "Motion") as counsel for 12 of the 21 named Plaintiffs ("12 Named Plaintiffs") in the instant action. ECF No. 44.

As recounted in the Motion, Plaintiffs filed a putative class and collective action complaint on May 11, 2021, which was subsequently amended on October 23, 2021 by the First

¹ Notably, two named foreign defendants, Harshad Chavda and BAPS Bochasanwasi Shri Akshar Purushottam Swaminarayan Sanstha (an India Public Trust), have not been served in connection with the instant case and are not represented by Weil, Gotshal & Manges LLP or Arnold & Porter.

Amended Complaint. ECF No. 1, 20. On November 23, 2021, the Court stayed all proceedings in the case except for “emergency situations” only² pursuant to the mandatory provisions of 18 U.S.C. § 1595(b)(1). ECF No. 22.

I. Defendants Agree that Plaintiffs’ Motion Should Be Granted.

Defendants do not oppose Plaintiffs’ Counsel’s Motion. Indeed, this motion should have been filed several months ago when the 12 Named Plaintiffs made their initial requests for counsel to do so. The 12 Named Plaintiffs’ intent was clear then, and remains so now. ECF No. 44-1 at 6. Furthermore, the 12 Named Plaintiffs have now engaged U.S. Local Counsel,³ Mark A. Berman of Hartmann Doherty Rosa Berman & Bulbulia LLC, who has reiterated their request that Plaintiffs’ Counsel withdraw as their legal representatives in the case. ECF No. 52.

Furthermore, Plaintiffs’ Counsel cite proper authority supporting their application. ECF No. 44-1 at 6. For example, New Jersey Rule of Professional Conduct 1.16 provides that a lawyer “shall withdraw from the representation of a client if . . . (3) the lawyer is discharged.” Plaintiffs’ Counsel’s request to withdraw as counsel for the 12 Named Plaintiffs is therefore entirely appropriate and should be granted.

II. The Court Should Give U.S. Local Counsel Ample Time to Confer with the 12 Named Plaintiffs Before Entertaining Any Application by Plaintiffs’ Counsel to Lift the Stay.

² The only other exception was for service of process issues pertaining to two foreign defendants. ECF No. 22 at 3.

³ As the Court is aware, the 12 Named Plaintiffs have been represented by India counsel, Aaditya SB Soni, Esq., who has been acting on their behalf in their communications with Plaintiffs’ Counsel in the above-referenced case.

In their Motion, Plaintiffs' Counsel state that, following the Court's decision on their Motion, they "intend to file a motion seeking to lift the stay temporarily for the purpose of early limited discovery." In that regard, they cite to their previous correspondence with the Court in which they claim, without a shred of basis, that they need to explore the reasons that each of the 12 Named Plaintiffs seek to have their claims dismissed from the case. ECF No. 44-1 at 6 n.4, *citing* ECF No. 39 at 2.

Defendants strenuously object to any application by Plaintiffs' Counsel to lift the stay in this case for three primary reasons. First, the 12 Named Plaintiffs have done precisely what the Court suggested they do at the telephonic hearing on August 10, 2023: they have retained counsel to appear on their behalf and file an application to withdraw their claims. Teleconference Tr. at 9:16-20, Aug. 10, 2023. That counsel, who is a frequent and regular practitioner in this District, has advised the Court that he needs a sufficient period of time in which to confer with his clients to confirm their intention to have their claims dismissed. ECF No. 52. That request is entirely reasonable, and it would be inappropriate for Plaintiffs' Counsel to file any motion until Mr. Berman advises the Court how his clients intend to proceed. Clearly, if they confirm their request to have their claims dismissed, that would obviate any need to entertain Plaintiffs' Counsel's application to lift the stay to take discovery.

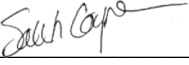
Second, Plaintiffs' Counsel -- who have now had four separate opportunities to identify any basis for their reckless claims of "unlawful retaliation," "obstruction," and "settlement" -- have utterly failed to do so. Such rank conjecture and speculation cannot support any application to lift the stay to take discovery. Nor have they identified or shown any "emergency," which is the only basis for lifting the stay. ECF No. 22.

Third, and as Mr. Berman has astutely pointed out, any such attempted discovery by Plaintiffs' Counsel of their own former clients would present serious ethical issues. ECF No. 52 at 1.

In sum, this is a bridge that we respectfully suggest should not be crossed, particularly until new counsel for the 12 Named Plaintiffs reports back to the Court following his meetings with his respective clients.

Dated: August 30, 2023

Respectfully Submitted,



Sarah Coyne
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